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April 5, 2020

**VIA E-MAIL**

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Re: Portland Harbor Superfund Site – UAO for Remedial Design in the River Mile 2  
East Project Area – Request for Conference

Dear Ms. Mairs and Ms. DeMaria:

We are writing in response to EPA's communication to EVRAZ Inc. NA dated March 26, 2020, issuing a unilateral administrative order (UAO) for remedial design at the River Mile 2 East Project Area (defined in the order as the areas between approximately River Mile 1.9 and River Mile 3.2 on the east side of the Willamette River). Pursuant to Section VII of the UAO, Evraz hereby requests a conference to discuss the order, including its applicability, the factual

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findings and determinations upon which it is based, the appropriateness of the actions Evraz has been ordered to take, and other relevant and material issues.

In a cover letter, EPA rejected Evraz's request for additional time to consider an agreed order on consent, discounting COVID-19-related concerns as a basis for inability to take action.<sup>1</sup> It is unclear whether EPA also considered Evraz's request in its March 23, 2020 correspondence for additional time due to a ransomware attack, which crippled communications for individuals at the company and has prevented access to company files for weeks. As of the date of your letter, the addressee was not receiving mail at the physical address you directed the communication (due to COVID-19-related stay-at-home orders) or at any email address you may have attempted delivery (due to the ransomware attack you have disregarded).

Regardless, Evraz remains willing to negotiate as set forth in our letter dated March 23, 2020, and in numerous previous communications to EPA since June of last year.

Notwithstanding EPA's characterization that "Evraz did not . . . engage in settlement negotiations during the . . . fourteen day period" that EPA set for response, Evraz's response outlined a series of topics for discussion in the appointed time frame, and has repeatedly requested that EPA engage on those and other issues over the course of almost a year. Several of the issues Evraz has highlighted remain relevant in the context of the UAO and accompanying statement of work (SOW):

- Past experience securing access to certain neighboring properties and the impact of the "Best Efforts" provision (UAO Paragraph XI.49). Evraz wishes specifically to request that EPA issue a "Participate and Cooperate" order to the other PRPs that EPA invited to early meetings regarding performance at B8 and which have neither offered financial support nor cooperation.
- The scope of the penalty and work takeover provisions (UAO Paragraph XVIII.77).
- Several aspects of the SOW Section 1.3 text, which:
  - Appear to provide data replacement will be optional rather than mandatory.
  - Refer to the RD guide, which calls for additional DEQ sampling to establish background levels.
  - Include explicit language requiring modeling to meet a no net rise requirement despite the inappropriateness of this requirement.
  - Appear to preclude flexibility for decreased sampling frequency in capped areas.

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<sup>1</sup> Although EPA purports to offer flexibility for deadlines in the UAO due to COVID-19, the cover letter goes on to direct that a written request for a conference must nevertheless be within 10 days and that the conference itself must be within 5 days—all of which is within the period that Evraz has already reasonably requested accommodation due to its facilities being shut down; its communications being at a standstill; its files being inaccessible; and its employees and legal staff juggling child care, emergency response to the pandemic, and struggling to keep business operations afloat. Notably, EPA has offered no explanation why a reasonable time accommodation could not be provided.

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- Section 3.7, which indicates a Treatability Study may be required, but it is unclear how this will be applied.

Although the timing is far from ideal, Evraz is pleased that EPA is now willing to confer. Please note that the list above is not exclusive, and we look forward to speaking about other aspects of the UAO, such as the findings of fact and sequencing of work activities, both within B8 and site-wide. Given ongoing difficulties globally and the holidays upcoming next week, we anticipate that scheduling on the ordered time frame may be difficult, but we propose April 9, 2020 as a target date for consideration.

Thank you in advance, and please do not hesitate to call if you have any questions or thoughts about how best to proceed.

Sincerely,



Beveridge & Diamond, P.C.  
Counsel for Evraz Inc. NA

By Loren R. Dunn, Esq.  
Principal

cc: Eileen Tierney, General Counsel and Corporate Secretary – EVRAZ Inc. NA

Debbie Silva, Environmental Specialist – EVRAZ Inc. NA